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THE SUPREME COURT OF ONTARIO

THE HONOURABLE MR. JUSTICE CALLON

OSGOODE HALL
TORONTO, ONTARIO M5H 2N5

January 28, 1982

National Parole Board
P.O. Box 620
Kingston, Ontario
K7L 4X1

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Dear Sirs:

Re: Regina v. Dube

I presided at the trial of one Joseph Rheal Richard Dube at Sudbury on January 11, 1982. He was charged with second degree murder but entered a plea of guilty to manslaughter which was consented to by the Crown and which was approved by myself. In the result, he was convicted of the offence of manslaughter. I enclose a copy of my reasons for sentence together with a copy of a psychological services report dated January 4, 1982, and a copy of a psychiatric assessment which is undated but which was presented to me at the time of the trial. From the contents of this psychiatric assessment, it is apparent that the assessment was made in the Sudbury jail following the arrest of the accused.

I trust that these enclosures will be of some value to you in the event that you are required to consider an application for parole by this accused.

Yours very truly,

T.P. Callon J.

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IN THE SUPREME COURT OF ONTARIO

B E T W E E N:

HER MAJESTY THE QUEEN

- and -

JOSEPH RHEAL RICHARD DUBE

---Before The Honourable Mr. Justice Callon, at the sittings of this Court, at Sudbury, Ontario, in the District of Sudbury, the 11th day of January, 1982.

APPEARANCES:

H. SAUVE, Q.C. - Crown Attorney for the District of Sudbury.

D. FLETCHER DAWSON - Counsel for the accused, JOSEPH RHEAL RICHARD DUBE.

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REASONS FOR SENTENCE

The accused has been charged with the offence of second degree murder as a result of the death of one, Douglas Lorne Lewis, on or about the 13th day of May, 1981, at the City of Sudbury.

On arraignment, the accused pleaded not guilty to the offence as charged, namely second degree murder, but tendered a plea of guilty to the included offence of manslaughter. The Crown consented to the acceptance of this plea to the lesser offence of manslaughter.

The accused met the deceased Lewis at the Coulson Hotel in the City of Sudbury at approximately 8:00 p.m. of the night in question. The accused was present with the deceased until approximately midnight, during which period of time they were obviously consuming alcoholic beverages. The deceased, at some time near or about midnight, went to the registration desk of the hotel and rented a room, apparently in his name, following which the deceased Lewis, and the accused went to that room. There is evidence that in the room the deceased, who from the evidence was of homosexual

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tendencies, made a homosexual advance upon the accused, as a result of which there was a physical altercation between the two of them.

The cause of death as given by the pathologist at the autopsy was edema secondary to traumatic head injuries. He also states that a contributing cause of death was the acute alcoholic intoxication of the deceased at the time of his death.

The Crown gave brief reasons for consenting to the acceptance of the plea of guilty to manslaughter, with which reasons I entirely agree. There is substantial evidence that the deceased was robbed at some time, but the evidence is not conclusive that the accused was the perpetrator of the robbery. The evidence of robbery appeared in the turned-out lining of the pockets of the deceased, the folder of his wallet lying on the bed, and the absence of any money, as I understand the evidence. In any event I am perfectly satisfied that there is no way in which the Crown could have proven beyond a reasonable doubt that this accused robbed the deceased, or that robbery was in any way the motivation on the part of the accused for this death of the deceased Lewis. It was on the basis of the consumption of alcohol, and the

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evidence of provocation, which the jury would have to very carefully consider, that I decided that the appropriate offence was manslaughter and not second degree murder, and I therefore entered a conviction against this accused for the offence of manslaughter. The maximum penalty to which the accused is liable of course for manslaughter is imprisonment for life.

I now turn to some of the matters that I must take into account in determining what is the appropriate sentence for this offence of manslaughter. The accused was born on August 3rd, 1960 so that he was 20 years of age at the time of this offence and he is now 21 years of age. He has been in custody since May the 13th, 1981, which is a period of almost eight months. This period of pretrial confinement must of course, be taken into account in determining what is an appropriate sentence. The fact that the accused has entered a plea of guilty to the offence of manslaughter has thereby obviated the necessity of a trial and is also a factor to be taken into account in his favour. On the other hand the accused has been convicted of ten offences, exclusive of this conviction for manslaughter, between December 29th, 1976, at which time he was just slightly over the age of 16 years, and March 25th, 1981, at

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which time he was 20 years of age.

Just summarizing very briefly the nature of those convictions, they included a conviction for fraud, mischief to private property, causing a disturbance, trafficking in a controlled drug, assault occasioning actual bodily harm, a breach of recognizance, causing a disturbance, and failure to appear, causing a disturbance, assault occasioning actual bodily harm, and theft over $200. No one of those convictions alone is of an extremely serious nature, but taken as a whole they indicate a complete disregard of the law by this accused, and a lifestyle that was bound to lead to something very serious as he has now encountered.

The report of Doctor Racinskas, which has been filed as exhibit 4 in these proceedings, provides what I perceive to be a proper assessment of this accused, when he reports as follows:

> " Personality testing reveals him to be a "character disorder. He is likely to be seen "as lacking in insight into his own motivations, "egocentric, shallow, and of having difficulty "forming longterm meaningful relationships. "Such persons typically show a lack of deep "emotional response, inability to profit from "past experience, inability to plan ahead, and

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"a reckless disregard for the consequences of
"their behaviour. The lack of social conformity
"and a persistent tendency to get into
"difficulties with the law are characteristic,
"along with a history of alcohol abuse and
"sexual acting out. Such individuals demonstrate
"an unusually high threshold and tolerance for
"punishment, such that punitive measures have
"negligible impact in redirecting their
"behaviour. He is quite likely to make a good
"initial impression, but the moodiness and
"resentment over time is likely to undo that
"impression.

" There was no evidence of psychosis nor
"strong aggressive or hostile themes that
"would suggest that he is dangerous. It
"appears then, that in the incident in
"question, his degree of impairment to
"alcohol, combined with a typical poor
"evaluation for the consequences of his
"behaviour, led to his beating the man more
"than he had anticipated.

" As you know, traditional psychiatric
"intervention with such individuals has been
"extremely disappointing, and one could
"therefore anticipate that he similarly would
"gain little benefit. A fundamental impediment
"to such intervention is that it would be
"extremely difficult, if not impossible, to form
"a trusting psychotherapeutic relationship with
"him. A structured rehabilitation environment
"would seem to be the best course of action."

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In summary, I must on the one hand take into account the youth of the accused, his plea of guilty, and the time that he has already spent in custody. On the other hand I must keep in mind that the fundamental purpose of sentencing is the protection of society. To that end the sentence that I impose should act especially as a deterrent to this accused, and at the same time provide a structured rehabilitative environment for him. Penal sanctions in the past have not been effective in altering the conduct of this accused and one can only hope that this further opportunity for rehabilitation of the accused will bear fruit. It is entirely up to the accused and no one else whether or not that proves to be the case.

Both counsel for the Crown and counsel for the accused have suggested the appropriate penalty for this accused for this offence is a term of imprisonment for five years. Although I always appreciate the assistance of counsel in this regard, I of course, am not bound in any way by their views. In this case however, I believe that a sentence of five years is the appropriate sentence, and I therefore impose it as a result of my own consideration of all of the factors which I am in law bound to consider. The sentence of the Court is therefore imprisonment for five years.

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I may say that I would think that the parole authorities, if they are ever to consider a mitigation, or lessening of the sentence of this accused, would want to be looking for a very substantial and persuasive change of attitude and conduct on his part during his term of confinement. It is often said that individuals are at the crossroads in their life. I would not think that there is a more glaring example of a person who is in that position than this accused today. Should he ever return to Court with a conviction for a very serious offence there would really be very little that could be said on his behalf to mitigate the results of his conduct.

I should also state in conclusion that both counsel for the accused and counsel for the Crown have stated to me that they do not believe that a Presentence Report would be of any assistance to me. Having listened very carefully to the evidence and the very able submissions of counsel for the Crown and for the accused, I agreed with those views.

Mr. Dube I may say sir that you have been very well represented in these proceedings, and if you do not understand and appreciate that, the next time that you stand up and have to look a Judge in the eye I do not think he will be as considerate as I have been of your situation today.

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CERTIFIED:

H. E. Mackey, C.S.R.
Official Reporter, S.C.C.

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